



November 3, 1998

NATIONAL  
FOOD  
PROCESSORS  
ASSOCIATION  
James Rodeheaver  
Branch Chief  
Processed Products Branch  
Fruit and Vegetable Programs  
Agricultural Marketing Service  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Room 0709, South Building  
Washington, D.C. 20250-0001

RE: *Request for Comments on the Qualified Through Verification Program for the Fresh-Cut Produce Industry* (63 Federal Register 47220, September 4, 1998)

Dear Sir:

1350 I Street, NW  
Suite 300  
Washington, DC 20005  
202-639-5900

National Food Processors Association (NFPA) is the voice of the \$430 billion food processing industry on scientific and public policy issues involving food safety, nutrition, technical and regulatory matters and consumer affairs. NFPA's three laboratory centers, its scientists and professional staff represent food industry interests on government and regulatory affairs and provide research, technical services, education, communications and crisis management support for the association's U.S. and international members who produce processed and packaged foods, drinks, and juices. Our members have no higher priority than food safety.

WASHINGTON, DC  
DUBLIN, CA  
SEATTLE, WA

NFPA appreciates this opportunity to provide comments on the above referenced public notice regarding the Qualified Through Verification (QTV) Program. NFPA commends the U.S. Department of Agriculture's Agricultural Marketing Service (AMS) for its efforts to maintain public confidence in the wholesomeness of minimally processed fruits and vegetables. However, the QTV Program should be considered in the context of the proper role of federal agencies in monitoring food production. We question whether a limited, voluntary, user-fee-based program such as QTV can "facilitate the marketing, distribution, processing, and utilization of agricultural products through commercial channels" (Section 203(n), Agricultural Marketing Act of 1946) without bias to certain companies.

**I. CONSUMERS SHOULD BE CONFIDENT OF THE SAFETY AND NUTRITIOUSNESS OF ALL REGULATED FOODS WITHOUT THE NEED FOR SPECIAL SEALS OR MARKS ON SOME FOODS**

NFPA strongly objects to the use of an official government seal on product packages of companies that participate in the QTV program. Use of the QTV seal has a real potential for giving consumers and producers the mistaken impression that products which carry the seal are safe and that products that do not are inferior. NFPA is aware that interested members of the fresh-cut fruit and vegetable industry have expressed significant reservations regarding the QTV program because it presents a government endorsement of particular brands of products through use of the QTV shield. Furthermore, this apparent government endorsement is only available to those members of the fresh-cut fruit and vegetable industry who are willing to pay for the service. To this end, despite assurances by the AMS that it would promptly review and qualify interested companies, there is evidence to suggest that the Agency has been unable to do so. Consequently, those brands that have been reviewed are able to use the QTV shield to the competitive disadvantage of those which have not applied.

Many companies which might decline participation in a voluntary, user-fee-funded program, such as QTV, manufacture products at least comparable to those of companies participating in the program. An Agency bias is created for those companies choosing to financially participate in QTV. Thus, the QTV seal becomes a marketing tool for those companies by implying government approval. Other companies are thereby coerced into the "voluntary" program lest they appear to be marketing inferior products to the consumer.

NFPA also questions the scientific basis for the Agency's verification activities under QTV. AMS, whose primary focus is the marketing of agricultural products, has neither the resources nor the expertise to conduct risk assessment for current, and more importantly, future fresh-cut products. Given that no assessment activities are required of program participants, products could bear the QTV shield in the absence of a company's ability to adequately control significant hazards, resulting in potential injury to consumers and the entire industry.

We believe that consumers have the right to expect that all food products produced in this country under government inspection are safe and wholesome. Providing or withholding use of a seal is clearly an improper mechanism to assure product safety and freedom from adulteration. Surely the better approach is to uniformly enforce the laws and regulations that are already in place.

**Moreover, the USDA does not have the statutory authority to qualify food safety protocols in companies that process fresh-cut fruits and vegetables.**

Qualification of food safety protocols is properly the province of the Food Safety and Inspection Service (FSIS) (for those products over which FSIS has statutory authority) or the Food and Drug Administration under their particular enabling statutes. In its September 1998 Request for Comment, AMS notes that "AMS processed fruit and vegetable inspectors verify that food processing facilities where AMS has contracted to perform in-plant product certification are conforming to FDA current Good Manufacturing Practices under 21 CFR Part 110 and are handling adulterated products in accordance with FDA requirements." (63 FR 47220) (September 4, 1998) There is no statutory authority by which the AMS can carry out these FDA duties.

If it is the intention of USDA "to inspect, certify and identify the . . . *condition* of agricultural products when shipped or received in interstate commerce" under the Agricultural Marketing Act, 7 U.S.C. §1622(h) (emphasis supplied), with regard to food safety, then USDA can do so "under such rules and regulations as the Secretary of Agriculture may prescribe." *Id.* **However, establishment of the QTV program in the absence of rulemaking – in fact, by fiat, - exceeds USDA's statutory mandate and thereby violates the Administrative Procedure Act, 5 U.S.C. § 551, et seq.**

## **II. HACCP IS A RISK MANAGEMENT SYSTEM DEDICATED TO FOOD SAFETY**

NFPA has been on record in support of the concept that Hazard Analysis and Critical Control Point (HACCP) systems should be restricted to the control of significant food-borne hazards. The HACCP system was created to control biological, chemical, and physical hazards in foods. Since its inception in the early 1970's, various scientific bodies [e.g., National Academy of Sciences/National Research Council (NAS/NRC), International Commission on Microbiological Specifications for Foods (ICMSF), the Codex Committee on Food Hygiene, the National Advisory Committee on Microbiological Criteria for Foods (NACMCF)] have acknowledged its significance and promoted its usefulness in assuring the production of safe food products. NACMCF particularly has played a key role in developing the principles and guidelines for HACCP and advising the agencies of the evolving concept of HACCP. NACMCF continues to view HACCP as a food safety program, not a quality program. Training programs and publications over the past years (e.g., the Food Processors Institute, NAS/NRC, NACMCF, American Association of Cereal Chemists) have reinforced the "safety only" aspect of HACCP. In the food industry, HACCP is synonymous with safety.

Unfortunately, the QTV program as presented in the July 1998 draft document is clearly out of step with the current thinking in the scientific community on how to best manage food safety hazards. Program elements such as consumer complaints,

recall procedures, pest control, sanitation standard operating procedures (sSOPs), employee training, and product coding are clearly either non-safety or prerequisite programs to HACCP, yet they are treated by QTV as equivalent to the food safety components of the program. Combining such diverse systems into one program will undermine the focus on food safety and result in a confusing, ineffective, and, therefore, counter-productive program with the potential to jeopardize the focus on what is most important, food safety.

**The QTV program, as currently designed and implemented by AMS, fails to adequately differentiate between food safety and food quality. This lack of adequate differentiation can only lead to consumer confusion, and, ultimately, consumer lack of confidence and possibly a breach in the safety of the food supply. For that and the other reasons set forth in these comments, NFPA must oppose the present design and implementation of the QTV program.**

### **III. FOOD SAFETY SHOULD BE PUBLICLY FUNDED**

**NFPA and its members object in the strongest terms to the *de facto* imposition of user fees for fresh-cut produce inspection.** As stated in the July 1998 QTV draft document, the primary purpose of the program is to verify the effectiveness of a firm's food safety system. If this is the intent of QTV, there is ample regulatory and legislative history to confirm that the assurance of food safety is a government provided service which clearly benefits the general public and should therefore be federally funded. We believe that industry funding of its own inspection through user fees could erode public confidence in government inspection programs. Government funding of inspection gives the consumer the best assurance of effective, uncompromising inspection.

User fees eliminate government incentive for efficiency in services designed to provide a public benefit. The financial burden of the program is clearly demonstrated in the pilot program in which all companies begin their rating at Level IV after validation. The most rapid advance to Level I for exemplary performance requires five audits within seven months at a cost of approximately \$10,000. Hidden costs for training, consulting, and microbiological testing may be required in addition to inspection. AMS services are provided at a fee of \$41 per hour.

**The issue of user fees has been the subject of many legislative battles in recent years for meat and poultry inspection services. The outcome has always been the same: food inspection is a public service that warrants federal funding.**

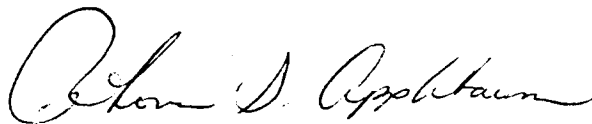
**IV. AMS SHOULD NOT PROVIDE SERVICES THAT COMPETE WITH THOSE THAT ARE OR COULD BE PROVIDED BY THE PRIVATE SECTOR**

NFPA opposes activities by a federal agency that compete directly with private sector initiatives. Such a situation would result in a competitive disadvantage for the private sector. For example, it is doubtful that non-government entities would have the authority to use a government seal such as the QTV seal, nor would a private sector certification carry the same impact with consumers as government certification. We believe that the appropriate role of a government agency is to provide a service which cannot or is not being adequately provided by the private sector. Inspection services, training, and HACCP consultation are and/or can be offered through trade associations and other private entities.

**V. CONCLUSIONS**

NFPA is strongly opposed to QTV, a quality program disguised as a food safety program, because it is seriously flawed from a scientific and technical perspective and because it will not enhance the safety of fresh-cut produce. The use of an official shield in this context is especially counterproductive to food safety and may undermine consumer confidence in a scientifically based HACCP system as the key to food safety. Furthermore, federal funds, not user fees, should be used to fund programs related to ensuring the public health. AMS cannot promote the marketing of agricultural products by way of voluntary, user fee-based programs like QTV without bias toward those participating companies. To attempt to do so will erode consumer confidence in the Federal food inspection process.

Sincerely,



Rhona S. Applebaum, Ph.D.  
Executive Vice-President  
Scientific and Regulatory Affairs



United States  
Department of  
Agriculture

Agricultural  
Research  
Service

Beltsville Area  
Beltsville Agricultural  
Research Center

Beltsville, Maryland  
20705

September 15, 1998

SUBJECT: QTV Proposal

TO: Eric Forman, Associate Deputy Administrator  
Marketing and Regulatory Programs

FROM: Alley E. Watada, Postharvest Plant Physiologist  
Horticultural Crops Quality Laboratory

I have read and reviewed the July 1998 draft of the "Qualified Through Verification" Program for the Fresh-cut Produce Industry, which was sent to me by Dr. Figueroa.

This draft is very good and I believe that the industry should approve it. The 1997 draft contained provisions on quality, which were questioned by a few influential individuals and deleted in the 1998 draft. Personally, I view quality to be important and believe it should be part of the program, because as the quality goes down, the plant tissue is more vulnerable to growth and contamination by microorganisms. Nevertheless, deletion of this topic should make the 1998 draft more amenable to the few industry individuals who questioned it.

The "Note" on page 12 indicates that "company must take prompt corrective action if AMS audit shows presence of generic *E. coli*". This may be of concern to some individuals because fecal matter is not always the source of *E. coli*. Dr. Michael Boyle and Dr. Larry Beuchat are microbiologists, so they can give better guidance on this issue than I.

This revised draft is easier to read than the previous draft. This may be because I am now more familiar with the program. Moving some of the details to the appendix was very helpful to the text.

As a scientist, I did not find anything that needs to be changed and recommend this draft for approval.

## **QTV COMMENTS RECEIVED**

The following are comments sent in to the Agricultural Marketing Service from:

Dr. Larry R. Beuchat  
college of Agricultural and Environmental Sciences  
University of Georgia

The comments are in response to the The Department of Agriculture (USDA) request for comments on the "Qualified Through Verification" Program (QTV).

Quote -            “I cannot offer any suggestions concerning changes in the draft. Implementation of the QTV program at the earliest possible time is encouraged.”

Larry R. Beuchat  
Professor



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academia

## The University of Georgia

College of Agricultural and Environmental Sciences  
Center for Food Safety and Quality Enhancement  
1109 Experiment Street  
Griffin, GA 30223-1797

September 9, 1998

Dr. Eric M. Forman  
U. S. Department of Agriculture  
1400 Independence Avenue, SW  
STOP 0234  
Washington, DC 20250-0234

Dear Dr. Forman:

Thank you for the opportunity to review the draft document, "Qualified Through Verification" Program for the Fresh-Cut Produce Industry. The AMS is to be commended for its leadership in this program. The level of safety of minimally processed fruits and vegetables will certainly be enhanced through application of the QTV program.

I cannot offer any suggestions concerning changes in the draft. Implementation of the QTV program at the earliest possible time is encouraged.

Sincerely,

Larry R. Beuchat  
Professor

LRB:an